

RESPONSE TO NOTICE OF NON-COMPLIANT AMENDMENT

This paper is filed in response to the Notice of Non-Compliant Amendment dated March 11, 2009. In particular amendments to the Abstract are presented on a separate page, the pages of this response include page numbers, the drawings have "Replacement Sheet" at the top and number identifying the sheet. The Remarks section below, and other sections above not already mentioned are presented again in an unchanged format. Applicant submits that this paper completes the response to the Non-Final Office Action and requests that the amendments and remarks be entered. If the Examiner feels that a telephone call would expedite the prosecution of this case, the Examiner is invited to call the undersigned at (617) 248-5222.

REMARKS

Status of the Claims

Claims 1 – 26 are pending. Claims 9 and 26 are withdrawn. Claims 27 – 46 have been previously cancelled. Applicant hereby amends claims 1 – 3, 7, and 15 – 24. Support for the claim amendments can be found throughout the specification, an at least on page 6, line 20 through page 7, line 30. After entry of this amendment claims 1 – 8 and 10 – 25 remain pending for examination. Applicant submits that this paper completes the response to the Non-Final Office Action and requests that the amendments and remarks be entered. If the Examiner feels that a telephone call would expedite the prosecution of this case, the Examiner is invited to call the undersigned at (617) 248-5222.

Replacement Drawing Sheets

The Examiner objected to the drawings in general for failing to show every feature of the invention specified in the claims. In particular the Examiner objected to the drawings because they failed to show "a distribution duct as specifically recited in lines 1 – 2 of claim 3," a "distribution duct . . . located at an edge of the structure and the collection duct . . . located at an edge of the structure opposite the distribution duct." Applicant has amended Figure 6 to show

how Figure 6 relates to Figure 1. Specifically, Figure 6 now shows the first rigid sheet, air channels and other features of claim 1, along with the distribution and collection duct, as well as the arrangement of these features.

The Examiner has also objected to the following claimed features as not shown in the drawings: (3) “‘structure [that] is at least part of a wall structure, and the distribution duct is arranged in a lower part of the wall structure and the collector duct is arranged in an upper part of the wall structure,’ as specifically recited in lines 1 – 3 of claim 8; (4) the ‘structure of claim 1 further comprising: a collector duct with at least one opening’ as specifically recited in lines 1 – 2 of claim 10; (5) ‘collection duct includes a plurality of openings with progressively changing sizes’ as specifically recited in lines 1 – 2 of claim 13; (6) ‘collection duct includes a plurality of openings, the openings ordered to be progressively closer to one another’ as specifically recited in lines 1 – 2 of claim 14; and (7) ‘structure according to claim 1, wherein the structure includes a wall and at least one of a floor and ceiling’ as specifically recited in lines 1 – 2 of claim 17”

Applicant submits that replacement Figure 6 now illustrates the inter-relation between Figure 1, and Figure 6, and thus the recited claim features are shown in the drawings. For example, Figure 6 now shows how the structure shown in Figure 1 may be used as a wall structure. Furthermore, Figure 6 now shows the relation of the distribution duct with the structure shown in Figure 1, the collector duct with openings where the openings have progressively changing sizes and are ordered to be progressively closer to one another.

The Examiner has objected to specific Figures for various formalities. The Examiner objected to Figure 2 because a lead line did not have an associated reference number. Reference number 11 has been added to the end of the particular lead line. The Examiner objected to Figure 3 because three arrows did not have associated reference numbers. The lead arrows have been deleted from the Figure. Figure 4 is amended to replace reference number 13 with reference number 6 to correspond to amendments in the Specification. The Examiner objected to Figure 6 because the lead line for reference number 18 intersected an arrow indicating air flow in the collecting duct 19. The particular arrow indicating air flow has been deleted from the figure. The Examiner objected to Figure 9 because the isometric view had a box around it. The box has been removed from the figure. The Examiner objected to Figure 10 because it is unclear if the plastic pipes are below the structure of the concrete, and if so, the Examiner stated the plastic

pipes should be indicated with dashed lines in the figure. The lines indicating the plastic pipes are now dashed lines, as per the Examiner's suggestion.

Applicant further submits that all of these features were previously described in the specification, and in particular on page 7, lines 15 through 30, thus the replacement drawings add no new matter.

Amendments to the Specification

Applicant amends the specification to more precisely refer to the figures and remedy potentially confusing descriptions associated with reference numbers. Applicant has also amended the abstract to ensure it is presented in a narrative form.

Rejections under 35 U.S.C. § 112, first paragraph

Claims 3 – 8 and 10 – 14 stand rejected under 35 U.S.C. § 112, first paragraph. The Examiner states that the claims are not enabled, arguing that the specification fails to describe the inter-relation of the features of the claimed invention. Applicant submits that the replacement Figure 6 shows the relation of the features of the invention Figures 1 – 5 and Figure 6. Applicant submits that claims 3 – 8 and 10 – 14 are enabled.

Rejections under 35 U.S.C. § 112, second paragraph

Claims 1 – 8 and 10 – 15 are rejected under 35 U.S.C. § 112, second paragraph. The Examiner indicates that the claims are indefinite. Amendments to the allegedly indefinite claims are described below. Applicant submits that the amendments render the claims definite.

Claim 1 has been amended to recite a first rigid sheet and a second rigid surface sheet, making clear that it is a first surface side of the first rigid sheet over which air is ventilated through the structure.

Claim 2 is amended to state the structure comprises a plurality of spacer protrusions, and to recite the first rigid sheet.

Claim 3 – 8 are definite based upon replacement Figure 6, which shows the relation between the distribution duct and the structure described in claim 1.

Claims 7, 8 and 10 -14 are definite based upon replacement Figure 6, which shows the relation between the collection duct and the structure described in claim 1.

Claims 15 and 16 are amended to recite that the second rigid surface sheet comprises mineral board or coated steel plate, respectively.

Claim 17 is definite based upon replacement Figure 6, which shows how the structure described in claim 1 and Figures 1 – 5 may include a wall and a floor or ceiling.

Claim 18 has been amended to recite a second spacer protrusion, a third rigid surface sheet and a second air channel.

Claim 21 has been amended to recite a second plurality of spacer protrusions.

Claims 22 – 24 are amended to recite that the third rigid surface sheet comprises mineral board, organic building board or coated steel plate, respectively.

Claim 25 has been amended to recite a first rigid sheet.

Rejections under 35 U.S.C. § 102(b)

Claims 1, 2, 17 – 21 and 25 are rejected under 35 U.S.C. § 102(b) as allegedly anticipated by United States Patent Number 6,158,178 to Jeffers, *et al.* (“Jeffers”). Applicant submits that Jeffers fails to anticipate amended claim 1. Specifically, Jeffers fails to disclose air between the first surface side of the first rigid sheet and second rigid surface sheet that has moisture content sufficiently low to inhibit fungal growth. Because Jeffers fails to teach this element of the claim, Jeffers does not anticipate Applicant’s claimed invention.

Rejections under 35 U.S.C. § 103(a)

Claims 3 – 8 and 10 – 14 stand rejected under 35 U.S.C. § 103(a) as allegedly obvious over a combination of Jeffers, and United States Patent number 5,746,653 to Palmer, *et al.*

(“Palmer”). Applicant notes that U.S. Patent number 6,189,270 also to Jeffers, *et al.* (“Jeffers

II”) is cited in the rejections under 35 U.S.C. § 103(a). Applicant further notes that Jeffers II is a divisional of the earlier referenced Jeffers patent, and therefore Applicant regards the two patents as disclosing identical subject matter. For practical purposes, Applicant refers to the two patents as Jeffers. Claims 15 and 22 - 23 are rejected under 35 U.S.C. § 103(a) as allegedly obvious over a combination of Jeffers, United States Patent number 2,039,601 to London (“London”) and United States Patent number 4,736,561 to Lehr, *et al.* (“Lehr”). Claims 16 and 25 stand rejected under 35 U.S.C. § 103(a) as allegedly obvious over a combination of Jeffers, United States Patent number 5,678,369 to Ishikawa, *et al.* (“Ishikawa”) and United States Patent number 6,446,396 to Morangoni, *et al.* (“Morangoni”).

Applicant submits that the amended claims are not obvious because the cited references, either alone or in proper combination, fail to teach or suggest each and every element of Applicant’s claimed invention. Applicant has amended claim 1, upon which all subsequent claims depend, either directly or indirectly, to recite “air between the first surface side of the first rigid sheet and the second rigid surface sheet has moisture content sufficiently low to inhibit fungal growth.” None of the cited references teach or suggest air of sufficient moisture level to inhibit fungal growth in the air channel network between the first two rigid sheets. Thus the cited references fail to render the claimed invention obvious.

Conclusion

Applicant would like to thank the Examiner for his/her time and consideration of this case. If a telephone conversation would help clarify any issues, or help expedite prosecution of, this case, Applicant invites the Examiner to contact the undersigned at (617) 248-5222. Additionally, please charge any fees that may be required or credit any overpayment to our Deposit Account 03-1721.

Respectfully Submitted,
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Date: March 25, 2009

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